

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2000-302-C - ORDER NO. 2000-841
OCTOBER 12, 2000

IN RE:	Application of Essex Communications, Inc)	ORDER GRANTING
	d/b/a eLEC Communications for a)	CERTIFICATE TO
	Certificate of Public Convenience and)	PROVIDE LOCAL
	Necessity to Provide Facilities-Based Local)	EXCHANGE AND LONG
	Exchange and Resold Long Distance)	DISTANCE
	Telecommunications Services within the)	TELECOMMUNICATIONS
	State of South Carolina and for Flexible)	SERVICES
	Regulation of Its Local Exchange Services)	
	and Alternative Regulation of Its Long)	
	Distance Business Service Offerings.)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Essex Communications, Inc. d/b/a eLEC Communications ("Essex" or the "Company") for authority to provide facilities-based local exchange telecommunications services and resold intrastate long distance telecommunications services within the State of South Carolina. Essex also requests that its local telecommunications services be regulated in accordance with the principles and procedures established in Order No. 98-165 in Docket No. 97-467-C (known as "flexible regulation") and that its long distance business service, consumer card, and operator service offerings be regulated in accordance with the principles and procedures established in Orders No. 95-1734 and 96-55 in Docket No. 95-661-C (known as "alternative regulation"). The application was filed pursuant to S.C. Code Ann. Sections 58-9-280 and 58-9-520 (Supp. 1999) and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed Essex to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Essex complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

On September 6, 2000, counsel for the SCTC filed with the Commission a Stipulation in which Essex stipulated that it would seek authority in non-rural local exchange ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Essex provided written notice of its intent prior to the date of the intended service. Essex also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Essex agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Essex provided the conditions contained in the Stipulation are met. At the hearing on this matter, the Stipulation was entered into evidence as Hearing Exhibit No. 1. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on September 20, 2000, at 2:30 p.m. in the Commission's Hearing Room. The Honorable William Saunders, Chairman, presided.

Bonnie D. Shealy, Esquire, represented Essex; Florence P. Belser, Deputy General Counsel, represented the Commission Staff. The SCTC did not appear at the hearing, and pursuant to the Stipulation, the SCTC did not oppose the Application of Essex. (See Hearing Exhibit No. 1).

Paul Riss, Chief Executive Officer, Chief Financial Officer, and Treasurer of Essex, appeared and testified in support of the Application. According to Mr. Riss, Essex is incorporated under the laws of the State of New York and has received authorization to transact business within the State of South Carolina from the Secretary of State for South Carolina. Essex's principal office is located in Melville, New York. Essex is 100% owned by eLEC Communications Corp, a diversified company engaged in the provision of telecommunications and website design and development.

Essex seeks authority to provide facilities-based local exchange and resold interexchange telecommunications services throughout the State of South Carolina. Essex seeks to provide a full range of local exchange and interexchange telecommunications services, subject to the Stipulation with the SCTC.

Mr. Riss offered that Essex has the managerial and technical abilities to provide the services for which it seeks authority. According to Mr. Riss, Essex has established a strong team to support its venture into the telecommunications market. The resumes of Essex's key management employees indicate significant experience in the telecommunications industry as well as experience in finance, customer service, billing, marketing, and network provisioning. Essex's management team brings together many elements of large and small company experiences and entrepreneurial successes. As to

technical abilities, Mr. Riss pointed to the technical expertise of several of the Company's personnel and also noted that Essex is presently providing service in several states.

Further, Essex has its own proprietary billing system and web-based customer service system to assist its customers. Mr. Riss also stated that Essex will rely to some extent on the technical abilities of the ILECs and underlying carriers.

With regard to the financial ability to provide the services for which authority is requested, Mr. Riss offered that Essex is financially qualified to render the service for which it seeks authority. According to Mr. Riss, Essex has sufficient financial resources to provide the requested telecommunications services, as well as the financial capability to maintain the services and to meet its lease and ownership obligations. eLEC, the parent company of Essex, is a NASDAQ listed company. A review of the financial statements included with the Application indicate that eLEC, the parent company, on which Essex will be relying for capital, is a liquid company with a strong cash position and a strong current ratio indicating that there are ample current assets to meet current liabilities. Further, equity is positive due to additional paid in capital by stockholders.

According to Mr. Riss, Essex intends to provide local service through the use of the UNE-P platform. Essex interconnects to BellSouth's unbundled loops through a UNE-P arrangement that goes directly to the customers. Essex will bill its customers directly using its in-house billing systems, and Essex's name and toll free contact number will appear on the bills. Essex provides comprehensive customer service to its customers, and Mr. Riss stated that Essex will be responsible for all customer inquiries and

complaints. Essex will use a variety of marketing techniques, including its own in-house sales department, direct mailing, and print advertisements.

Upon certification from this Commission, Mr. Riss warranted that Essex will abide by all the Rules and Regulations of the South Carolina Public Service Commission. Mr. Riss affirmed that Essex would participate in support of universally available telephone service at affordable rates and that Essex would provide services which meet the applicable service standards of the Commission. Further, Mr. Riss testified that the provision of local service by Essex would neither adversely impact the public interest nor would Essex's service adversely impact the availability of affordable local exchange service. Mr. Riss offered that approval of Essex's application is in the public interest by increasing the level of competition of telecommunications services in South Carolina.

By its Application, Essex requested waivers from certain Commission regulations and requirements. Specifically, Essex requested waivers from (1) any requirement found in Rule 103-610 that all records be kept within the State of South Carolina and (2) the requirement found in Rule 103-631 to publish and distribute local exchange directories. Mr. Riss testified that Essex would keep its books and records at its principal place of business in Melville, New York and that the books and records would be available for inspection. Mr. Riss also indicated that Essex would make arrangements to have customer numbers published in ILEC directories. By its Application, Essex also made a broad request for waiver of reporting requirements, but Essex withdrew that waiver request at the hearing.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Essex is incorporated under the laws of the State of New York and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. Essex is a provider of facilities-based local exchange and resold long distance telecommunications services, and Essex wishes to provide its services in South Carolina.
3. The Commission finds, based upon the evidence presented at the hearing, that Essex has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 1999).
4. The Commission finds that Essex's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 1999).
5. The Commission finds that Essex will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B)(4) (Supp. 1999).
6. The Commission finds that Essex will provide services which will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B)(2) (Supp. 1999).

7. The Commission finds that the provision of local exchange service by Essex “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 1999).

8. The Commission finds that waivers of Reg. 103-610 (maintaining books and records within the state) and Reg. 103-631 (publishing local directories) as requested by Essex are in the public interest and should be granted.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Essex to provide intrastate interLATA toll service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the long distance services which are consistent with the principles and procedures established for alternative regulation for business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under the Commission approved alternative regulation, the business service offerings of Essex, including consumer card and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission

will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to Essex also.

3. The Commission adopts a rate design for Essex for its resale of residential long distance services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

Essex shall not adjust its residential long distance rates below the approved maximum level without notice to the Commission and to the public. Essex shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential long distance services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be

treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 1999).

4. If it has not already done so by the date of issuance of this Order, Essex shall file its revised maximum long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order, shall be consistent with the Commission's Rules and Regulations, and shall comport with South Carolina law in all aspects.

5. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Essex to provide competitive intrastate local exchange services within the State of South Carolina. The terms of the Stipulation between Essex and the SCTC (attached hereto as Order Exhibit 1) are approved and adopted as a portion of this Order. Any proposal to provide local services to rural service areas is subject to the terms of the Stipulation. In accordance with the Stipulation, Essex may not provide any local service to a customer located in a rural incumbent LEC's service area, unless or until Essex provides such rural incumbent LEC and the Commission, written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. The Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while it conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon a showing of good cause.

It is specifically provided that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Order in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications as they may be entitled. If, after notice from Essex that it intends to serve a customer located in a rural incumbent LEC's service area, and the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or if the Commission institutes a proceeding of its own, no service may be provided by Essex in a rural incumbent LEC's service area pursuant to this Order without prior and further Commission approval.

6. Essex's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No.98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for Essex's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, Essex's local exchange services tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

7. Any proposed change in rates for local telecommunications services must be made in compliance with S.C. Code Ann. Sections 58-9-520 (Supp. 1999) and 58-9-540 (Supp. 1999).

8. Essex shall file, prior to offering local exchange telecommunications services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all aspects.

9. Essex is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

10. With regard to the Company's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

11. Essex shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Essex changes underlying carriers, it shall notify the Commission in writing.

12. With regard to the origination and termination of toll calls within the same LATA, Essex shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dial parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

13. Essex shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. Please refer to the Commission's Website www.psc.state.sc.us/forms for the annual report forms.

This two page report is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS".

14. Further, Essex shall file such other annual financial information as the Commission requires of competitive local exchange companies. This information includes annual reports and gross receipts reports. As the surveillance report, the annual report, and the gross receipt report necessitate the filing of intrastate information, Essex shall keep such financial records on an intrastate basis as needed to comply with these reporting requirements. Please refer to the Commission's Website at www.psc.state.sc.us/forms for this four page report entitled "Annual Report for Competitive Local Exchange Carriers." This form shall be utilized by the Company to provide the Commission with annual financial information on the Company's intrastate operations.

15. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Essex shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Please refer to the Commission's Website at www.psc.state.sc.us/forms for this one page report. It shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the

representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

16. Essex shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

17. The Commission finds the reasoning behind Essex's requests for waivers of (1) Reg. 103-610 - maintaining books and records within the state and (2) Reg. 103-631 - publishing its own directory reasonable and hereby grants the waivers of those specific regulations. Essex shall make reporting requirements as required of all CLECs and IXC's operating in South Carolina. Essex is directed to comply with all Commission regulations, unless a regulation is specifically waived by the Commission.

18. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Essex to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain

information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, Essex shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

19. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2000-302-C

Re: Application of Essex Communications, Inc. d/b/a)
eLEC Communications for a Certificate of Public)
Convenience and Necessity to Provide Facilities-)
based Local Exchange Telecommunications and)
Resold Long Distance Services in the State of)
South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Essex Communications, Inc. d/b/a eLEC Communications ("Essex") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Essex's Application. SCTC and Essex stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Essex, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. Essex stipulates and agrees that any Certificate which may be granted will authorize Essex to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. Essex stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. Essex stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and

until Essex provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Essex acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Essex stipulates and agrees that, if Essex gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Essex will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Essex acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

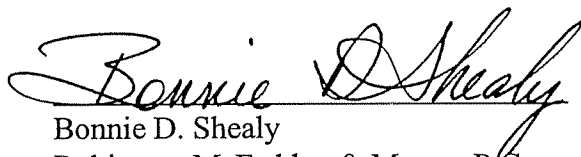
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Essex, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Essex agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. Essex hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 16th day of September, 2000.

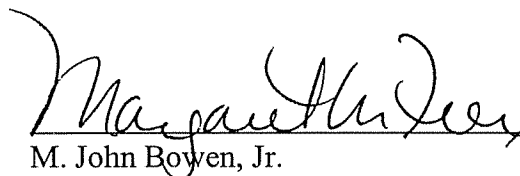
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ATTACHMENT A

South Carolina Telephone Coalition Member Companies
for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company